

NO. 2010-10004-16

BETTY E. WHEAT  
Plaintiff,

V.

WAL-MART STORES, INC.  
Defendant.

§ IN THE DISTRICT COURT  
§  
§  
§ 16 JUDICIAL DISTRICT  
§  
§  
§ OF DENTON COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

NOW COMES Betty E. Wheat, hereinafter called Plaintiff, complaining of and about, hereinafter called Defendant, and for cause of action shows unto the Court the following:

**DISCOVERY CONTROL PLAN LEVEL**

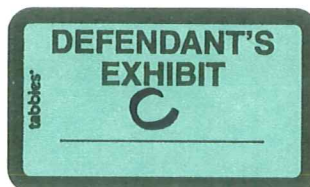
1. Plaintiff intends that discovery be conducted under Discovery Level 2.

**PARTIES AND SERVICE**

2. Plaintiff, Betty E. Wheat, is an Individual whose address is in Denton County, Texas.
3. The last three digits of the social security number for Betty E. Wheat are 447.
4. Defendant Wal-Mart Stores, Inc., a Nonresident Corporation, may be served pursuant to sections 5.201 and 5.255 of the Texas Business Organizations Code by serving the registered agent of the corporation, CT Corporation, at 350 N. St. Paul Street, Dallas, Texas 75201, its registered office. Service of said Defendant as described above can be affected by personal delivery.

**JURISDICTION AND VENUE**

5. The subject matter in controversy is within the jurisdictional limits of this Court.



6. This court has jurisdiction over Defendant Wal-Mart Stores, Inc., because said Defendant purposefully availed itself of the privilege of conducting activities in the State of Texas and established minimum contacts sufficient to confer jurisdiction over said Defendant, and the assumption of jurisdiction over Wal-Mart Stores, Inc. will not offend traditional notions of fair play and substantial justice and is consistent with the constitutional requirements of due process.

7. Furthermore, Plaintiff would show that Defendant Wal-Mart Stores, Inc. engaged in activities constituting business in the State of Texas as provided by Section 17.042 of the Texas Civil Practice and Remedies Code, in that said Defendant committed a tort in whole or in part in Texas.

8. Venue in Denton County is proper in this cause under Section 15.002(a) (1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

#### FACTS

9. On or about January 9, 2008, while Plaintiff, Betty Wheat, who is an elderly woman in her seventies, was standing inside the entrance of the Wal-Mart Store located on FM 3040 in Lewisville, Denton County, Texas, attempting to get a shopping cart when an employee of Defendant Wal-Mart, who was operating a machine used for moving several shopping carts, rammed the carts into the stationary rack of carts which in turn rammed into Plaintiff. The sudden jolt from the shopping carts combined with the surprise of the collision forced Plaintiff to fall to the ground, causing bruising to the left hip and ensuing significant pain throughout her back and neck. Plaintiff continued to experience intense pain through the evening and night to such a degree that on January 10, 2008, it became necessary for Plaintiff to be transported by ambulance to the emergency room at

Lewisville Medical Center, where she was admitted and remained until January 19, 2008, and underwent numerous tests and treatment for pain management.

10. Plaintiff's injuries, as described above, together with her enduring severe pain and suffering are a direct result of Defendant's employee's negligent actions. Defendant's employee was on the job and performing duties related to her employment at the time of the accident.

**PLAINTIFF'S CLAIM OF NEGLIGENCE  
AGAINST DEFENDANT WAL-MART STORES, INC.**

11. Defendant Wal-Mart Stores, Inc.'s had the duty to instruct its employees in the proper operation of moving machinery which included its duty to exercise the degree of care that a reasonably careful person would use to avoid harm to others under circumstances similar to those described herein.

12. Plaintiff's injuries were proximately caused by Defendant's negligent, careless and reckless disregard of said duty.

13. The negligent, careless and reckless disregard of duty of Defendant consisted of, but is not limited to, the following acts and omissions:

- A. In that Defendant's employee failed to keep a proper lookout for Plaintiff's safety that would have been maintained by a person of ordinary prudence under the same or similar circumstances;
- B. In that Defendant's employee failed to maintain a clear and reasonable distance between Plaintiff and Defendant's moving which would permit Defendant's employee to bring the moving equipment to a safe stop without causing its equipment to collide into Plaintiff;
- C. In that Defendant's employee failed to keep such distance away from Plaintiff as a person using ordinary prudent care would have done;
- D. In that Defendant's employee was operating said equipment at a rate of speed which was greater than that would have been operated by a person of ordinary prudence under the same or similar circumstances; and



- F. In that Defendant's employee failed to properly slow down the moving equipment upon approaching the stack of stationery carts.

#### **DAMAGES FOR PLAINTIFF**

14. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff was caused to suffer physical injuries, and to incur the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff, Betty E. Wheat for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services in Denton County, Texas;
- B. Reasonable and necessary medical care and expenses which will in all reasonable probability be incurred in the future;
- C. Physical pain and suffering in the past;
- D. Physical pain and suffering in the future;
- E. Physical impairment in the past;
- F. Physical impairment which, in all reasonable probability, will be suffered in the future;
- G. Loss of Household Services in the past;
- H. Loss of Household Services in the future;
- I. Mental anguish in the past;
- J. Mental anguish in the future;
- K. Fear of future disease or condition; and
- L. Cost of medical monitoring and prevention in the future.

**PLAINTIFF'S CLAIM OF RESPONDEAT SUPERIOR  
AGAINST DEFENDANT, WAL-MART STORES, INC.**

16. Plaintiff incorporates the foregoing paragraphs and all statements contained therein. At the time Plaintiff was struck by the shopping carts, and immediately prior thereto, Defendant's employee was within the course and scope of employment. Additionally, Defendant's employee was engaged in the furtherance of Defendant's business and in accomplishing a task for which he was employed.

**REQUEST FOR DISCLOSURE**

17. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of service of this request, the information or material described in Rule 194.2(a)-(i), and (l).

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate; costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

Elsey & Elsey  
3212 Long Prairie Road, Suite 200  
Flower Mound, TX 75022  
(972) 906-9695  
(972) 906-7998 (fax)

By: 

Chad D. Elsey  
Texas Bar No. 24058450  
Chuck Elsey  
Texas Bar No. 24001489  
Vance E. Hendrix  
Texas Bar No. 24050746  
Attorneys for Plaintiff, Betty E. Wheat

**PLAINTIFF HEREBY DEMANDS TRIAL BY JURY**



**Service of Process  
Transmittal**

01/12/2010

CT Log Number 515990237

**TO:** Kim Lundy  
Wal-Mart Stores, Inc.  
702 SW 8th Street  
Bentonville, AR 72716

**RE:** Process Served in Texas

**FOR:** Wal-Mart Stores, Inc. (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Betty E. Wheat, Pltf. vs. Wal-Mart Stores, Inc., Dft.

**DOCUMENT(S) SERVED:** Citation, Original Petition

**COURT/AGENCY:** 16th Judicial District Court, Denton County, TX  
Case # 2010-10004-16

**NATURE OF ACTION:** Personal Injury - Slip/Trip and Fall - Failure to Maintain Premises in a Safe Condition  
- The sudden jolt from the shopping carts combined with the surprise of the collision forced Pltf. to fall to the ground, on January 9, 2008, located on FM 3040 in Lewisville, Denton County, TX

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Dallas, TX

**DATE AND HOUR OF SERVICE:** By Process Server on 01/12/2010 at 13:05

**APPEARANCE OR ANSWER DUE:** By 10:00 a.m. on the first Monday following the expiration of 20 days

**ATTORNEY(S) / SENDER(S):** Chad D. Elsey  
Elsey & Elsey  
3212 Long Prairie Rd., Suite 200  
Flower Mound, TX 75022  
972-906-9695

**ACTION ITEMS:** CT has retained the current log, Retain Date: 01/12/2010, Expected Purge Date: 01/17/2010  
Image SOP  
Email Notification, Melanie McGrath-CT West  
CLS-Verificationwest@WoltersKluwer.com

**SIGNED:** C T Corporation System  
**PER:** Beatrice Casarez  
**ADDRESS:** 350 North St Paul Street  
Suite 2900  
Dallas, TX 75201  
**TELEPHONE:** 214-932-3601



**CITATION – Personal Service: TRC 99 and 106**

THE STATE OF TEXAS

CAUSE NO. 2010-10004-16

COUNTY OF DENTON

TO: Wal-Mart Stores Inc serve Registered Agent CT Corporation 350 N St Paul Street Dallas TX 75201; (or wherever he/she may be found)

Notice to defendant: You have been sued. You may employ an attorney. If you, or your attorney, do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the first Monday following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Court:	16th Judicial District Court 1450 E. McKinney, 3rd Floor, Denton, TX 76209
Cause No.:	2010-10004-16
Date of Filing:	January 05, 2010
Document:	Plaintiff's Original Petition
Parties in Suit:	Betty E Wheat; Wal-Mart Stores Inc
Clerk:	Sherri Adelstein, District Clerk 1450 E. McKinney, Suite 1200, Denton, TX 76209
Party or Party's Attorney:	Chad D Elsey 3212 Long Prairie Road Suite 200, Flower Mound TX 75022

Issued under my hand and seal of this said court on this the 6th day of January, 2010.

Sherri Adelstein, District Clerk  
Denton, Denton County, Texas

BY: Melissa Lanham  
Melissa Lanham



**Service Return**

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ m., and executed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ M by delivering to the within named

\_\_\_\_\_ in person a true copy of this citation, with attached copy(ies) of the Plaintiff's Original Petition, at \_\_\_\_\_

Service Fee: \$ \_\_\_\_\_ Sheriff/Constable  
\_\_\_\_\_ County, Texas

Service ID No. \_\_\_\_\_ Deputy/Authorized Person

**VERIFICATION**

On this day personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed on the foregoing instrument and who has stated: upon penalty of perjury, I attest that the foregoing instrument has been executed by me in this cause pursuant to the Texas Rules of Civil Procedure. I am over the age of eighteen years and I am not a party to or interested in the outcome of this suit, and have been authorized by the Denton County Courts to serve process.

Subscribed and sworn to before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_  
Notary Public





CAUSE NO. 2010-10004-16

BETTY E. WHEAT	§	IN THE DISTRICT COURT
	§	
VS.	§	DENTON COUNTY, TEXAS
	§	
WAL-MART STORES, INC.	§	16 <sup>TH</sup> JUDICIAL DISTRICT

**DEFENDANT'S ORIGINAL ANSWER**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, Wal-Mart Stores, Inc. (incorrectly sued, correctly named "Wal-Mart Stores Texas, LLC"), Defendant in the above-entitled and numbered cause, and files this its Original Answer to Plaintiff's Original Petition, and would respectfully show the Court as follows:

**I.**

Defendant generally denies the allegations contained in Plaintiff's Original Petition, demands strict proof thereof, and says this is a matter for jury decision.

**WHEREFORE, PREMISES CONSIDERED,** Defendant prays that upon final hearing hereof, Plaintiff take nothing by this suit, that Defendant recover its costs, and that Defendant have such other and further relief, both at law and in equity, to which it may be justly entitled.

**Respectfully submitted,**

**COBB MARTINEZ WOODWARD, PLLC**  
1700 Pacific Avenue, Suite 4545  
Dallas, TX 75201  
(214) 220-5202 (direct phone)  
(214) 220-5252 (direct fax)

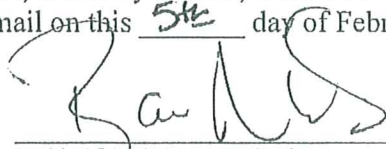
By: 

**RAMONA MARTINEZ**  
Texas Bar No. 13144010  
email: [rmartinez@cobbmartinez.com](mailto:rmartinez@cobbmartinez.com)

**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been forwarded to counsel for Plaintiff, Mr. Chad D. Elsey, Attorney at Law, 3212 Long Prairie Road, Suite 200, Flower Mound, Texas 75022, either by telefax, electronic mail, certified mail, return receipt requested, and/or regular U.S. mail on this 5<sup>th</sup> day of February, 2010.

A handwritten signature in black ink, appearing to read 'Ramona', is written over a horizontal line.

**RAMONA MARTINEZ**